IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1909.

No. 551

UNITED STATES OF AMERICA, *Appellant,*

vs.

HORACE G. STONE et al., *Appellees.*

STATEMENT OF THE CASE.

The main appeal in this case challenges only the decrees of the Circuit Court which were affirmed by the Circuit Court of Appeals made in favor of appellees, Horace G. Stone, Nathaniel C. Sears, Lyman E. Cooley and International Audit Company, none of whom are parties to the bill of complaint, but all of whom are intervenors under a contract or stipulation dated November 6, 1901.

In the cross-appeal it is distinctly stated that no errors are assigned therein against said appellees Stone *et al.*, so that the only errors assigned against them are in the main appeal.

The Circuit Court of Appeals held that no errors were urged in that court against said decrees in favor of Stone *et al.* except the single claim that the decrees in favor of appellees Stone and Sears for attorneys' fees were "excessive" (Rec., 13431), and as no error is assigned in this court that the decree in favor of appellee Sears is excessive it follows that the only error properly assigned before this court is that the decree in favor of appellee Stone is "excessive."

The word "excessive" has a well defined meaning in courts of appeal.

The decree for $42,500 for attorneys' fees in favor of appellee Stone is based on a written contract made November 6, 1901, by complainant with the defendants, Oberlin M. Carter, Lorenzo D. Carter and I. Stanton Carter. This contract is a contract in each suit pending in six different Circuit Courts. (See its caption, Rec., 119 and 13419.)

It provides for the payment out of the funds in the hands of each receiver, of the following:

> "(a) The fees, traveling expenses and other expenses of Oberlin M. Carter's chief counsel [said Stone] and of his attorney at Chicago [said Sears] to be fixed and allowed by the court * * * from time to time."

The said contract of November 6, 1901, required the Carters to turn over "forthwith" all the assets in issue "traced" to them and not "disposed of," but paragraph 9 of the agreement provided that the payment of said attorneys' fees, etc., was not dependent on the performance of the entire contract, but that it was "predicated" on the turning over of

that part of the assets in controversy received from Paul, Westcott & Bragg, less what the Carters had expended for certain purposes, etc.

Paragraph 9 did not require the Paul, Westcott & Bragg assets to be turned over "forthwith," but all thereof were in fact turned over as follows:

L. D. and I. S. Carter turned over at once all except $9,343.15 (Rec., 5070) and O. M. Carter turned over at once $37,114.75 more than the contract called for (Rec., 390). Later on L. D. Carter turned over $10,000 as a specific payment of the $9,343.15 and it was accepted and kept without objection. (Rec., 5071.)

Said Stone also promptly rendered a statement covering the entire matter. (Dec. 23, 1901; Rec., 4990.)

The master (Rec., 5071) and the Circuit Court and the Circuit Court of Appeals all held that the contract was complied with so as to require the payment of said attorneys' fees, etc.

Said contract further provided:

> "The importance of the case and the means and methods taken to bring the same to a just determination speedily and not the length to which the proceedings may be protracted to be considered as the elements of merit in fixing such fees." (Rec., 13420.)

In the complainant's answer to the petition of said Stone for said fees (Rec., 244) the following admissions are made:

(a) "That the case was one almost entirely on the weight, effect and bearing of the evidence, which by reason of the fact that the charges of fraud in

the engineering work extended over several years, and under several contracts, and by reason of the fact that in the suits the complainant undertook to trace the investments of the profits of the contracts through its successive changes for a period of ten years, made the record very voluminous, as hereinbefore stated." (Rec., 264.)

(b) "That the said H. G. Stone did everything that could be reasonably expected to facilitate proceedings in the cause" (Rec., 260), except on one matter referred to hereinafter.

(c) That as to delays in the case, the "major part of these delays are in no way to be charged to the defendants or their counsel." (Rec., 261.)

(d) "That in the handling of the evidence for the defense, and in the preparation of briefs of the evidence, it took great care, skill and labor on the part of the defendants' solicitor (as it did on the part of complainant's solicitor) to properly perform his duty to his client." (Rec., 264.)

(e) That the cause was one of "importance." (Rec., 264.)

The amount sued for by complainant (see its bill of complaint, Rec., 22) was as follows:

Alleged 1/3 of Greene & Gaynor's profits	$722,528.02
"Arbitrary allowance"	1,575.00
Income on alleged "investments" of $690,301.85 (see bill of complaint) from August 6, 1897, to April 6, 1908, at say legal interest rate of 5%, about	367,000.00
Total claimed by complainant	$1,091,103.02

The record in this case is estimated by the Circuit Court as equivalent to 50,000 pages. (Rec., 360.)

Ordinarily a suit for services rendered under a written contract is carried on at law in an action of assumpsit and tried before a jury. In the case at bar such a trial was waived as the contract provides for a trial "by the court." (Rec., 13420-1.)

The Circuit Court made the following findings of fact (Rec., 406):

1. That said Stone had properly rendered services for 2,000 days as O. M. Carter's chief counsel under said contract.

2. Taking into consideration the length of time the court fixed the rate at $30 per day, although the evidence was unusually strong and practically undisputed that the fair value was $15,000 per year or $50 per day for the entire period or $100 per day if the time was reckoned for less days than the entire period.

The Circuit Court of Appeals affirmed those findings and stated as follows (Rec., 13431):

> "The time, skill and expenditures involved in the services of counsel for which the allowances were granted are neither disputed nor questionable in the light of the record."

And that court affirmed the findings and decree of the Circuit Court in favor of said Stone of 2,000 days at $30 per day, less $17,500 already paid to him, making a decree in favor of said Stone of $42,500.

AUTHORITIES FOR APPELLEES.

"Findings of fact in a suit in equity by both the Circuit Court and the Circuit Court of Appeals will not be reversed by this court unless shown to be clearly erroneous."

Dun v. *Lumberman's Credit Association*, 209 U. S., 20.

Also, *Page* v. *Rogers*, 211 U. S., 575.

The orders paying Stone *et al* as intervenors various sums in 1904 were final orders.

Trust Co. v. *Grant Locomotive Works*, 135 U. S., 224.

Trustees v. *Greenough*, 105 U. S., 531.

"As the reference in this case was by consent to find the facts, we think the rule in *Kimberly* v. *Arms* applies, and as there is nothing to show that the findings of fact were unsupported by the evidence we think they must be treated as conclusive."

Davis v. *Schwartz*, 155 U. S., 637.

No new objections on appeal.

Belk v. *Meagher*, 104 U. S., 279.

Objections not made before the master cannot be raised on appeal.

Burns v. *Rosentein*, 135 U. S., 455.

Master's report not set aside in case like present.

Furber v. *Ferris*, 145 U. S., 133.

Tilghman v. *Proctor*, 125 U. S., 149-150.

Callaghan v. *Myers*, 128 U. S., 617.

Crawford v. *Neal*, 144 U. S., 585.

Warren v. *Keep*, 155 U. S., 265.

Stone's suit for services is on a cause of action at law, tried before the court, by agreement, without a jury; and findings of 2,000 days at $30 per day and that the contract of November 6, 1901, was performed, are conclusive.

> "Where a case is tried by the court without a jury, its findings upon questions of fact are conclusive here; it matters not how convincing the argument that upon the evidence the findings should have been different."
>
> *Stanley* v. *Supervisors of Albany,* 121 U. S., 547.

> "Where a case is tried by the Circuit Court without a jury, and it makes a special finding of facts, with conclusions of law, alleged errors of fact are not, on writ of error, subject to revision by this court, if there was any evidence on which such findings could be made."
>
> *Hathaway* v. *First Nat. Bank,* 134 U. S., 494.

A "lien" on property is not a "personal interest" in it.

Ward v. *Chamberlin,* 2 Black, 437.

A final decree as to the first instalment of a contract is conclusive as to the validity or invalidity of the contract.

Wilson v. *Dean,* 121 U. S., 525, 534.

BRIEF OF ARGUMENT.

The errors actually assigned by appellant in this court are as follows (Rec., 13444):

1. The appellant claims that the decrees to Stone *et al.* are not a charge on the fund in court. The contract of November 6, 1901, answers that claim.

2. The appellant claims that said decrees cannot be sustained as "costs," etc. The decrees are based on the contract.

3. The appellant claims that the contract of November 6, 1901, has not been performed by the defendants. This is general and is followed by detailed assignments.

4. The appellant claims that L. D. and I. S. Carter failed to comply with paragraph 4 of the contract of November 6, 1901, which required them to disclaim any "personal interest" in the assets in controversy, *i. e.*, that L. D. Carter claimed a "salary lien" on $21,000 Kentucky Central bonds and that I. S. Carter attempted to avoid a decree for assets paid out and not accounted for by him by claiming salary, etc.

That said H. G. Stone aided them in their said attempts and spent much of his time in this case in that behalf, so that there was delay in turning over said $21,000 of bonds and complainant was put to the trouble and expense of a reference to a master, etc. That L. D. and I. S. Carter finally turned over the $21,000 of bonds, but in the final hearing they failed to "account" for $25,781.22 of other assets, of which $21,529.15 came from sources other than Paul, West-

cott & Bragg, leaving $4,252.07 of the Paul, Westcott & Bragg assets unaccounted for under paragraph 9 of the agreement upon which paragraph 9 the contract says that the payment of attorneys' fees, etc., is "predicated."

4. Another assignment of error numbered 4, is that the Circuit Court of Appeals erred in holding that the complainant did not urge in that court a failure of "prompt delivery" of the assets required by paragraph 9 of the agreement, *i. e.*, those received from Paul, Westcott & Bragg. The complainant says it did assign that error both in the record and in its brief. (Rec., 13449.)

5. The appellant claims that the decree in favor of appellee Stone for 2,000 days at $30 per day is "excessive both as to time and rate" and is "exorbitant" if based on part of the assets in controversy, *i. e.*, $135,971.77 instead of being based on the entire amount in controversy, *i. e.*, $1,091,103.02.

6. That the allowance to the International Audit Company of $1,000 for the services of its manager, Robert Nelson is not covered by the contract of November 6, 1901, and ought not to be over $1.50 per day.

7. That the allowance to Lyman E. Cooley of $1,600 for services as "expert engineer and witness" is not covered by the contract of November 6, 1901, and ought not to be over $1.50 per day.

As the Circuit Court of Appeals held that no errors were urged before that court by appellant except the claim that the decrees to Stone and Sears were ex-

cessive, and as appellant assigns no error here that the decree to appellee Sears is excessive, there is but one error before this court if the decision of the lower court stands, *i. e.*, that the decree to Stone is excessive.

The appellant assigns only one error here against the holding of the Circuit Court of Appeals that no errors were urged before it except that the decrees to Stone and Sears for attorneys' fees were excessive. That one error assigned here is that the Circuit Court of Appeals erred in holding that appellant did not urge in that court any claim of failure of "prompt delivery" of part of the Paul, Westcott and Bragg assets called for by paragraph 9 of the agreement of November 6, 1901.

The record before this court shows what errors the complainant actually assigned in the Circuit Court of Appeals, but there is no record here of the proceedings before that court showing whether or not all those errors were urged or whether some were waived or abandoned or whether complainant elected to stand on one or the other of inconsistent errors.

Complainant refers to its brief (Rec., 13449), but that is not part of the record.

But even if this court would reverse the Circuit Court of Appeals without any such record there is no complaint of failure of "prompt delivery" of the Paul, Westcott & Bragg assets to be found in complainant's assignments of error "14th, 15th, 17th, 18th and 19th." All that is claimed in those errors is that some of the assets have never been turned over at all. There is no

claim of failure of "prompt delivery" of what was in fact delivered or turned over.

An assignment of error that one part of the assets has never been delivered at all is not an assignment of error that there was delay in delivering the other part.

There is an assignment of error in the Circuit Court of Appeals that the "said defendants have not sufficiently complied with the terms of the said agreement of November 6, 1901." (Rec., 422.)

But where a decree determines that a contract has been fully performed an assignment of error merely asserting that it has *not* been performed is insufficient to raise the question of delay in its performance.

"Prompt Delivery."

But even if "prompt delivery" were in issue before this court the lower court was right in affirming the master and the Circuit Court in holding that the contract of November 6, 1901, so far as it related to attorneys' fees, etc., had been fully performed by the defendants O. M. and L. D. and I. S. Carter.

The only delay claimed is in turning over $21,000 of Kentucky Central bonds and coupons on which appellant says that L. D. and I. S. Carter "claimed liens on said assets for salaries alleged to be due them by O. M. Carter." (Rec., 419-420.)

In the first place paragraph 2 of the agreement of November 6, 1901, requires the Carters to turn over all unexpended assets "traced" to them.

But paragraph 9 of said agreement provides that

the agreement as to attorneys' fees is not based on turning over all the assets described in paragraph 2, but it expressly states that the payment of said attorneys' fees is "predicated" only on the Carters turning over what remained unexpended of those particular assets received by them from Paul, Westcott & Bragg.

On October 15, 1892, "upon motion of complainant's solicitor," a reference was made to a master for his findings of fact as to

> "whether said Lorenzo D. Carter and I. Stanton Carter have turned over to the receiver herein"

the Paul, Westcott & Bragg assets called for by said paragraph 9 of said agreement. (Rec., 148.)

The master reported April 15, 1903,

> "and finds that all the receipts from said Paul, Bragg & Westcott are accounted for by said defendants in accordance with the contract of November 6, 1901." (Rec., 5071.)

The facts are that the Carters promptly turned over all the assets called for by paragraph 9 of the agreement on which the payment of attorneys' fees was "predicated."

This was done by L. D. and I. S. Carter promptly turning over all thereof except $9,343.15 (Rec., 5071), and O. M. Carter promptly turning over $37,114.75 is addition to what was called for by said agreement. (Rec., 390.)

Even if all the assets called for by paragraph 9 of the agreement were not promptly turned over the complainant waived the delay by expressly providing in the order of reference to the master that the

master should give L. D. and I. S. Carter "an opportunity" to turn over anything which they had failed to turn over. (Rec., 148.)

Under that order L. D. and I. S. Carter turned over $10,000 of said $21,000 of Kentucky Central bonds as a specific payment of the $9,343.15 of Paul, Westcott & Bragg assets and this was accepted without objection by the complainant and thereupon the master (Rec., 5071) and Circuit Court and Circuit Court of Appeals all held that all the property had been turned over under the contract of November 6, 1901, so as to put that contract in operation as to attorneys' fees, etc.

Not only did the complainant (after the delay had occurred) obtain the order of court directing the master to give L. D. and I. S. Carter "an opportunity" to turn over that money (Rec., 148), but the complainant did not raise its present claim of failure of "prompt delivery" either before the master or before the Circuit Court in its exceptions to the master's report or before the Circuit Court of Appeals in its assignment of errors in that court and complainant admits in its assignment of errors here that the Circuit Court of Appeals held that no such claim was made in that court. (Rec., 13449.)

THE DECREES FOR $25,781.22 AGAINST L. D. AND I. S. CARTER.

Decrees were entered against L. D. and I. S. Carter for assets disposed of by them and not accounted for as follows:

Against L. D. Carter	$ 7,577.04
Against I. S. Carter	18,204.18
Total	$25,781.22
Deduct admitted credit to I. S. Carter for salary drawn and spent (overlooked by C. C. A.) (Rec., 320-321)	$3,450.00
	$22,331.22
Deduct undisputed amount received by L. D. and I. S. Carter from sources other than Paul, Westcott & Bragg (Rec., 13449)	$21,529.15
Amount of Paul, Westcott & Bragg assets claimed by appellant as not turned over	$802.07

Even if everything claimed by appellant was true there is only a shortage of Paul, Westcott & Bragg assets of the trifling sum of $802.07.

The total Paul, Westcott & Bragg assets as stated by complainant is $349,475. (Rec., 247.)

This alleged shortage of $802.07 is about one-fourth of one per cent. thereof.

The contract of November 6, 1901, paragraph 9 only calls for "substantially" all of what remained unexpended of said assets. The word "substantially" covers a shortage as great as ten per cent. In the present case the alleged shortage is only one-fourth of one per cent. and is covered by the word "substantially."

Furthermore, the master (Rec., 5071) and the Circuit Court and the Circuit Court of Appeals all agree in a finding of fact that there was no shortage of Paul, Westcott & Bragg assets, but that all thereof were in *fact* turned over as required by the contract.

The decrees of $25,781.22 were for assets disposed of by L. D. and I. S. Carter with no receipts or vouchers taken by them to prove such disbursements.

The contract only required them to "give all the information they can" as to such disbursements. This they gave (Rec., 4721), but the master required them to prove such disbursements according to the rules in equity, *i. e.,* held them "strictly to an accounting as trustees." (Rec., 5046.)

This they were unable to make as they had paid out the money not expecting to be called upon long afterwards for receipts and vouchers which they did not take and hence they were held liable on that basis for said $25,781.22.

As against that, however, both courts held that O. M. Carter turned over $37,114.75 not called for by the contract (Rec., 390), so that in any event the three Carters turned over more than was required by the entire contract of November 6, 1901.

The Circuit Court of Appeals held that no reviewable error was assigned by complainant in that court of any failure to turn over all the Paul, Westcott & Bragg assets and no error is assigned in this court as to that holding, so that even if there was shortage of $802.07 and even if the word "substantially" did not cover it no such error can be urged on the present record.

DISCLAIMING PERSONAL INTEREST.

Appellant claims that paragraphs 7 and 8 of the contract of November 6, 1901, are dependent on paragraph 4 of that agreement which requires L. D. and I. S. Carter to "file answers disclaiming any personal interest in the aforesaid assets in controversy."

But paragraph 9 of that agreement states as follows (Rec., 13421):

> "(9) The assent of the United States to paragraphs numbered (1), (7) and (8) of this agreement is predicated upon the understanding that the said defendants will turn over to the receiver at least substantially all of the assets turned over to I. Stanton Carter and L. D. Carter by J. H. Paul, R. E. Westcott and James Bragg,"

less what the Carters had spent for certain purposes.

Suffice it to say that the decisions of the Circuit Court and Circuit Court of Appeals, that paragraphs 1, 7 and 8 of the contract are "predicated"—as the contract states—on the performance of paragraph 9, are good law.

Still further the claim by appellant that L. D. and I. S. Carter asserted a "salary lien" does not constitute a violation of their agreement to disclaim any "personal interest," as claiming a "lien" is not claiming a "personal interest."

All L. D. Carter and I. Stanton Carter agreed to disclaim is their "personal interest" in the assets. They did not agree to release their liens for advances or for services. There is a very wide difference between a personal interest in property and a lien thereon, as will be seen from the following quotation from

Anderson's Law Dictionary, page 624, under the head of lien:

> "A lien in equity is not in strictness a *jus in re* or a *jus ad rem;* that is, neither a property in the thing itself, nor a right of action for the thing. It is a charge upon the thing; a right to possess and retain the property until some charge attaching to it is paid or discharged."

This court in *Ward* v. *Chamberlin,* 2 Black, 437, uses the following language:

> "A lien on land constitutes no property or right in the land itself."

TIME SPENT BEFORE THE MASTER.

Appellant asserts that a large part of the time spent by appellee Stone in this case was spent before the master on behalf of L. D. and I. S. Carter.

In its answer to said Stone's petition for fees appellant states as follows:

Time spent before master (Rec., 255)	6 days
Time spent before court on exceptions to master's report (Rec., 256)	1 day
Total	7 days

Said 6 days were spent before the master between October 21, 1902, and December 8, 1902. (Rec., 255.)

The master filed his report and exceptions were filed to it on April 15, 1903. (Rec., 256.)

The exceptions were argued before the court January 7, 1904, and decree entered that day. (Rec., 256.)

It thus appears that there is no foundation whatever for appellant's claim that appellee Stone spent a large part of 2,000 days for L. D. and I. S. Carter.

SALARIES OF L. D. AND I. S. CARTER.

Appellant complains that appellee Stone acted for L. D. and I. S. Carter in claiming salaries as O. M. Carter's agents while he was in prison.

Proof that appellee Stone not only acted in good faith but that he was admittedly right is shown by the following admission made by appellant in its exceptions to the master's report (Rec., 320-1):

> "To that extent, to wit, twenty-three months, at $150 per month, $3,450, we concede that I. Stanton Carter would be entitled to credit under the second clause of the agreement of November 6, 1901, as being so much of the assets actually disposed of by him prior to the receivership and therefore beyond his control." (Rec., 320-1.)

RES JUDICATA AND ESTOPPEL.

The fees and expenses covered by the contract of November 6, 1901, were payable from "time to time." (Rec., 121.)

Numerous installments were paid under that contract between January, 1904, and April, 1908, without any appeal then or ever being taken.

The only appeal as to fees, etc., ever taken is from the order of April 14, 1908.

After numerous suits had been brought by Carter, by Stone, and by others under that contract of November 6, 1901, for fees and expenses, and after all of these suits had been decided against the complainant and decrees entered and paid and no appeal ever taken, it is too late for complainant to claim as to the subsequent decree of April 14, 1908,

that the contract of November 6, 1901, has never been in force.

The claim that the contract of November 6, 1901, has not been complied with because the property called for by paragraph 9 of the contract has not been turned over has been decided against the complainant by a master (Rec., 5071) and by both the Circuit Court and the Circuit Court of Appeals.

The question of the performance of paragraph 9 of the contract of November 6, 1901, was referred to a master. (Rec., 148.)

On the master's report paragraphs 1, 7 and 8 relating to consolidating all the suits and to attorney's fees, etc., were "put in operation." (Rec., 151.)

The decree putting those paragraphs in operation was "interlocutory" until money was paid out under it, and then said payments of money were *final* decrees from which an appeal would lie even though the main case was undecided. See attorneys' fees paid in *Trustees* v. *Greenough,* 105 U. S., 531.

It is elementary law that a final decree regarding the first installment on a contract is conclusive between the parties as to the validity or invalidity of the contract. *Wilson* v. *Dean,* 121 U. S., 525, 534.

The first installment on the contract of November 6, 1901, was paid February 15, 1904, the order stating, "Counsel for the United States not resisting." (Rec., 178.)

Another installment was paid May 3, 1904, the order stating, "Assented to May 2, 1904, Marion Erwin, Special Asst. Atty. Gen'l." (Rec., 184.) No

objection was saved in this assent that the contract was not in operation.

Neither of those final orders has ever been appealed from, and those orders are conclusive in all subsequent litigation that the contract of November 6, 1901, has been complied with so as to put it in operation.

Numerous other similar orders were made up to April, 1908, from none of which has any appeal ever been taken.

Even the five orders up to April, 1908, paying said Stone $17,500 under the contract of November 6, 1901, have never been appealed from, although the order of April 14, 1908, allowing him $42,500 more is appealed from on the ground that the contract of November 6, 1901, has never been in operation.

At the time all said orders were made the salaries claimed by L. D. and I. S. Carter stood disallowed just as at present. Disallowed January 7, 1904 (Rec., 150). So continued until decree of April 14, 1908, when part of their salary was allowed to each.

It is, therefore, too late for appellant to claim that the contract of November 6, 1901, so far as it provided for attorneys' fees, etc., has not been fully complied with.

Furthermore, the appellant is here claiming a decree for the assets in West Virginia (Rec., 395) and in New York (Rec., 396) and in New Jersey (Rec., 397).

Those decrees are based on paragraph 1 of the agreement of November 6, 1901. (Rec., 119 and 13419.)

The appellant claims the benefit of those decrees and hence cannot dispute the agreement on which those decrees are based.

STONE'S FEES NOT LIMITED TO FUND AT CHICAGO.

The claim that the Circuit Court allowed $88,236.54 of fees and expenses out of $135,971.77 is misleading, as the contract of November 6, 1901, is a separate contract, made in each suit (see its caption, Rec., 119), and said attorneys' fees and expenses are a charge on all the funds in controversy, whether at Chicago, New York, Springfield, Savannah, or in New Jersey or West Virginia.

The amount sued for was $690,301.85 with the income thereon from about November, 1894. (Rec., 22.) This amounted on April 14, 1908, at 3 per cent. per annum, to over $900,000, and at 5 per cent. to $1,091,103.02.

That contract did not provide that the attorneys' fees, etc., should be paid *only* out of the money at Chicago, or out of the money not tied up, but it provided that those fees, expenses, etc., should be paid from the entire "fund to be accounted for to the receiver." (Rec., 121.)

The caption of the contract shows that it is a separate contract in the suits in New York, New Jersey, Georgia, West Virginia, Northern District of Illinois and Southern District of Illinois. (Rec., 119.)

Paragraph 2 of the contract of November 6, 1901, provides that *all* the "assets claimed by the government" in each of said suits, traced to the Car-

ters and not *bona fide* disposed of by them shall be "turned over" under that contract, and paragraph 3 provides for "all the information they can" give as to what has been disposed of.

No distinction is made between assets "tied up" in doubtful *ex parte* proceedings and assets not so tied up.

Paragraph 1 of the contract provides in effect that all the suits shall be tried at Chicago, and this was done, and for convenience the attorneys' fees, etc., were paid, or ordered paid, primarily, from the money at Chicago.

The allowance of $42,500 to appellee Stone as a balance for fees for acting as chief counsel in the Circuit Court was by the decree of April 14, 1908, made payable, if necessary, out of the money in the hands of the receivers "in other districts." (Rec., 407.) No error was assigned by complainant in the Circuit Court of Appeals as to that part of the decree.

Furthermore the decree in favor of complainant specifically covers all the assets in all the districts (Rec., 395 to 400), showing that all the assets in all the districts were litigated at Chicago. And the decree expressly states that it covers services "whether in the proceedings in this district or in the proceedings under the said auxiliary bills in other districts under the said agreement of November 6, 1901." (Rec., 409.)

APPELLANT'S ANSWER TO STONE'S PETITION.

The complainant offers no evidence of any materiality or weight against said Stone's bill for services and his testimony in support thereof or against the testimony of William W. Gurley, John J. Herrick, John P. Wilson, John S. Miller and Nathaniel C. Sears, but the complainant in its answer to said Stone's petition makes a long appeal to the court to relieve it from its liability on the ground that while it sued to recover over a million dollars and would have felt more liberal if it had recovered it, that it did not recover it or even get half that amount and hence said Stone ought to cut down his bill accordingly.

That would be a first-rate defense if it were made against the fees of the attorneys for the complainant, *i. e.*, that they recovered only a fraction of what they expected to get, but it is not a good defense against the fees of defendants' attorneys.

As a matter of law the question of how much the complainant recovered herein is immaterial, or if it is material then the less the complainant recovered the better the service performd by said Stone in defending the case.

Any claim that the more the complainant recovered the more the attorney for the defendant ought to have will not be tolerated in a court of equity because it would be paying the defendants' attorney extra if he lost his case and cutting down his fees if he won it, and thus put him in a position where his

duty to his client would be in conflict with his own pecuniary interest.

As to the claim that complainant did not expect to pay as much when it made the contract as it cost to carry out the contract, that is not a good defense to a contract. Nor is it a good defense that the contract was made with poor judgment or that it turned out differently from what complainant's attorney expected, or that the current rates for lawyers' services in Chicago, where the contract was made, are higher than in Savannah, Georgia.

Those are all matters to be considered when the contract is made and not afterwards.

The only way to raise those questions is by a suit to set the contract aside.

As a matter of fact the complainant obtained great advantages by that contract.

The complainant sued for property amounting in August, 1897, to $722,528.02, with the income from that time forward, and when the contract of November 6, 1901, was made the complainant had seized only a small part of that amount and was anxious to trace the remainder, and by the contract of November 6, 1901, the Carters agreed to turn over all they had and give all the information they could as to the remainder and to dismiss their demurrers, etc., etc., and the complainant received other important benefits as follows:

The complainant was anxious to get all the property into court and to keep it there until the final decree and to learn what had been done with the

property which was not in court and to trace if possible the $150,000 alleged to have been paid out under the 1896 contracts and to save all the property from any waste or sacrifice, and the complainant at that time was very confident of its ultimate success and was willing to make concessions in order to carry out its purposes and probably supposed that the conflict would be short and one-sided in favor of complainant, and thereupon the complainant made said contract of November 6, 1901, by which it obtained among others the following benefits:

(a) By paragraph 2 of the agreement, Carter *et al.* agreed to turn over all the assets in controversy (except those disposed of) to abide the final decree. This paragraph was intended to ratify the *ex parte* receiverships and cut off any efforts to have the receivers discharged.

(b) By paragraphs 2 and 3, O. M. Carter and L. D. Carter and I. S. Carter, who were charged with criminal fraud and were not bound to testify at all or to disclose the whereabouts of any assets, agreed to turn over everything they had and to "waive their privilege and give all the information they can with regard to what property has been disposed of and its disposition."

(c) By paragraph 4, L. D. and I. S. Carter agreed to dismiss their demurrers and disclaim any personal interest in the assets, including the 8th avenue and Orange real estate, the title to which stood in their names.

(d) By paragraph 5, O. M. Carter agreed to dismiss his demurrers and to answer in all the suits.

These concessions were considered of great importance to the complainant when it made the contract of November 6, 1901.

APPELLEES COOLEY AND INTERNATIONAL AUDIT COMPANY.

The decrees in favor of Appellees Lyman E. Cooley and International Audit Company were both affirmed by the Circuit Court of Appeals.

The Circuit Court of Appeals held that no errors were urged in that court by appellant against said Cooley or International Audit Company and no error is assigned in this court as to that holding.

In so far as those decrees are based on the performance of the contract of November 6, 1901, those matters have been discussed in connection with the decree to Appellee Stone, and the brief in connection therewith is adopted here.

The contract of November 6, 1901, provides for the payment of the following:

> "(c) The expenses of taking evidence on behalf of said Carter, including the services of an accountant at not exceeding ten dollars per day for his services when needed and actually employed, plus his expenses, if any." (Rec., 13421.)

The appellant argues that because one accountant is specifically mentioned, the contract does not cover the services of another accountant, nor the services of an expert engineer.

But the contract calls for the payment of "expenses," and then to make it certain that "ex-

penses'' covered such services as expert accountants, the contract says ''including'' an accountant.

The contract therefore construes ''expenses'' as covering such expenses as an accountant, *i. e.*, an expert in accounts; and as this case became a great dispute not only as to accounts but as to engineering, both courts below held that the contract covered two expert accountants and one expert engineer—not at $1.50 per day, but at rates based on the great and intricate questions involved herein.

Even if those services were not covered by the contract, yet the court had a large fund to award to the real owner and that ownership could not be determined without the court having the assistance of expert accountants and expert engineers, and under the rule that such a fund must bear the expenses of its care and disposition, the services of said Cooley and of Robert Nelson, Manager for the International Audit Company, were necessary—as both courts hold—and were used—as both courts hold—and hence ought to be paid for, *not* at $1.50 per day, but at rates based on adequate compensaiton to men of high skill and great experience in their professions, and both courts below so held.

Appellee Nathaniel C. Sears.

As already stated the Circuit Court of Appeals held that the only error assigned against appellee Sears was that the allowance to him of $5,000 was ''excessive.'' No error that said decree is ''excessive'' is assigned in this court.

The decree to said appellee Sears was affirmed by the Circuit Court of Appeals.

No errors are either assigned or suggested against appellee Sears except those urged against appellee Stone which are herein fully discussed.

Hence as to those matters the appellee Sears adopts the brief herein of said appellee Stone.

DECREES TO APPELLEE STONE.

There were two decrees to appellee Stone. One for $42,500 for balance of attorneys' fees and one for $2,251.31 for money paid out by him for expenses under the contract of November 6, 1901.

No errors were assigned in the Circuit Court of Appeals—so that court holds—as to said decree of $2,251.31 and none are assigned here against said holding of that court.

It is respectfully submitted that the decrees in favor of appellees Stone, Sears, Cooley and International Audit Company should be affirmed.

WILLIAM W. GURLEY,
Solicitor for said Appellees.

APPENDIX.

All the Circuit Judges of the Seventh Circuit—one as trial judge and the other three as the Circuit Court of Appeals—held that the allowances to appellees Stone, Sears, Cooley and International Audit Company were proper.

Those decrees were based on a record of 50,000 pages (Rec., 360) and on the personal knowledge of the trial judge as to what had been done in the case and as to the attorneys' fees were based on the affidavits hereto attached of John J. Herrick, John S. Miller, John P. Wilson, William W. Gurley, Nathaniel C. Sears and Horace G. Stone, all members of the bar of this court.

Opposed thereto are the affidavits of Marion Erwin stating how much time was actually spent in court and giving his opinion as to the other matters.

And on towit: the 1st day of April, 1908, came Horace G. Stone and filed in the clerk's office of said court a petition in the words and figures following, towit:

PETITION OF H. G. STONE FOR ALLOWANCE OF FEES.

In the Circuit Court of the United States, For the Northern District of Illinois, Eastern Division.

United States
vs.
Oberlin M. Carter *et al.* } Gen. No. 25980.

Petition of Horace G. Stone for Allowance of Solicitor's Fees Under Contract of November 6, 1901, Approved by the Court.

To the Hon. Christian C. Kohlsaat,
Circuit Judge of said Court:

Your petitioner, Horace G. Stone, respectfully shows and states to your Honor as follows: On November 6, 1901, a contract was made between the complainant of the one part and the defendants Oberlin M. Carter, Lorenzo D. Carter and I. Stanton Carter of the other part, by which it was agreed among other things, that there should be paid out of the money in controversy, the solicitor's fees of the chief counsel for said Oberlin M. Carter, regardless of whether said Carter won or lost in said case. Said contract being in part as follows:

"The fees, traveling expenses and other expenses of Oberlin M. Carter's Chief Counsel and of his attorney at Chicago, to be fixed and allowed by the Court."

Subsequent to the making of said contract it was approved by the Court in the above entitled cause.

Among other things agreed in said contract, it was provided in effect, that the litigation as to all the money and property in controversy between the complainant and the defendants in other suits pending in other courts of the United States should be litigated and settled in the above entitled cause, so that all said money and property in litigation here

and elsewhere, was put under the exclusive jurisdiction of this court. The amount claimed by the complainant in all said suits was about $700,000, and all thereof was in litigation in the above entitled cause, as the contract provided that the final order in the above entitled cause should be the final order in all said suits. Said contract did not limit the solicitor's fees of said chief counsel to any per cent. of the amount involved, nor did it fix any maximum amount for said fees, but it left it to said chief counsel to determine what work he thought necessary to defend said suits, and agreed that he should be paid in full therefor out of the money in controversy.

Your petitioner further says: I have been chief counsel for the defendant Oberlin M. Carter in said cases, since October 5, 1901, a period of about 2,000 working days. As soon as I commenced I found that the important transactions involved were so numerous and so complicated, that I must give it practically all of my time, which I did. I often worked at night on it and overtime, and what I did outside the Carter case was more than offset by the night work and overtime work. So that I have spent substantially as much as 2,000 days regular work on these cases. The complainant desired to introduce the testimony and original exhibits before the Board of Engineers and before the Court Martial and before the Court at New York in the Removal Proceedings against Greene & Gaynor, and I had to go over all of those extensive records with great care, and then all of such testimony and evidence was admitted and used in the present cases, except the testimony of two witnesses, and it had to be carefully considered in handling the present cases, and with the new evidence taken in the present cases, the court estimates the record as "covering about 50,000 pages," and the court says that so much work was done upon it by both sides "that the court is relieved of the burden of several years of reading." I was the only attorney for the defendants who went through the entire record, and took the responsibility of selecting such parts of it as ought to be particularly presented to the court, and to do that on a record of 50,000 pages required great labor and careful attention. The questions at issue involved great and complicated works of harbor engineering and involved the most complicated questions of expert accounting with regard to vast sums covering a period of ten years, all of which questions I had

to study out with great care and thoroughness and with the very best efforts which could be brought to bear, so that I could examine the witnesses and present it to the court intelligently and properly.

In taking evidence in the case I saved the complainant much labor and expense and expedited matters by admitting in evidence ex parte affidavits obtained by the complainant from numerous sources, instead of insisting as I might, on taking testimony in the usual way, and at all times I have tried to expedite the case as much as possible. The outcome of the case justified all the labor which I put upon it, and the result thereof was of inestimable value to the principal defendant, Oberlin M. Carter.

The case was tried before the court in September and October, 1906, and the labor and strain in such a trial and in the preparation for it was so great that a long rest thereafter was absolutely necessary. Then in 1907 the court asked each side to submit what was equivalent to a condensed reargument of the entire case, and after that was done a decision was expected and I had to review the case preparatory to proceedings after the decision, and besides with a record of 50,000 pages, to throw it off my mind and take up other important work was practically impossible, and not even advisable, when a decision might be rendered any day, or the court might ask for additional abstracts, etc., and so I was compelled to give my time to this case from the trial until now, except a few trifling matters. The complainant realized the necessity of constant attention here by keeping Mr. Johnson here most of the time.

As to the value of my services per day, I realize that it was for a long period and hence that the rate per day should be less than for a short period, but the necessities of the work required me to throw aside practically all business which would have naturally come to me. My receipts from my profession for the five years ending about the time I took up the present cases were considerably more than an average of $15,000 per year, i. e. $50 per day. Since then such receipts have been very little comparatively, because I could not take other business and do my full duty to the present cases.

Under such circumstances, I consider $50 per day only one-half what my services were worth, considering my practice when I commenced the present cases, and the loss of that practice and the frightful strain for the past six years in carrying a record of 50,000 pages with the prestige and force

of the Government against me, and the decisions of the Board of Engineers and Court Martial and the President, and the decisions in the Greene & Gaynor cases against me; but I am willing to take $50 per day for said 2,000 days if I get it without a contest, but if there is a contest I claim $100 per day and ask leave to produce witnesses as to the full value of my said services and as to the reasons which compelled me to do a large amount of extra work in said cases.

Respectfully submitted,

HORACE G. STONE.

Dated Chicago, February 19, 1908.

Endorsement: Filed April 1, 1908. H. S. Stoddard, Clerk.

And on to-wit: the 9th day of April, 1908, came the said H. G. Stone and attached to said petition and filed in the clerk's office of said Court certain affidavits in the words and figures following, to-wit:

AFFIDAVIT OF H. G. STONE.

In the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

United States
vs.
Oberlin M. Carter, *et al.* } Gen. No. 25980.

State of Illinois, }
Cook County. } ss.

Horace G. Stone, being first duly sworn on oath deposes and says, that he rendered all of the services described in the foregoing petition, dated February 19, 1908, that he did so in pursuance of and relying upon said contract of November 6, 1901, which contract and the order of court ratifying and approving the same this affiant refers to and makes a part hereof.

This affiant further says, that it was necessary in order to properly defend said case, to render all the said services described in said petition, and this affiant did render said services in good faith, in the full belief that he was doing his duty in the premises.

This affiant further says that the fair value of said services

was at least one hundred thousand dollars, which said amount is justly due and owing to this affiant, less seventeen thousand five hundred dollars heretofore received by this affiant on account of said services.

HORACE G. STONE.

Subscribed and sworn to before me this 9th day of April, A. D. 1908.

MARY L. DOWNES,
Notary Public.

(Seal)

AFFIDAVIT OF W. W. GURLEY.

In the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

United States
vs.
Oberlin M. Carter, *et al.* } Gen. No. 25,980.

State of Illinois, }
County of Cook. } ss.

William W. Gurley being first duly sworn on oath deposes and says:

That he is now and for over 30 years has been a practicing lawyer in the City of Chicago, and for at least the last 20 years of that period he has been familiar with the amount and value of solicitors' fees in important litigation. Deponent further says:

I have read the petition dated February 19, 1908, in the above entitled cause, of Horace G. Stone for solicitor's fees under the said contract of November 6, 1901. I have personal knowledge of much of Mr. Stone's work in the said cause, as we occupied the same law offices for the eleven years ending May 1, 1906, and we have occupied offices in the same building since that date. I have known Mr. Stone intimately for over a third of a century and am familiar with his law practice during that period, as we have mutually discussed our cases and have had many important cases together. From such mutual discussion of the Carter case and from other sources I am generally familiar with his work in said Carter case, and with the facts stated in his said petition, and in my opinion he is entitled to receive either $50 per day from Oc-

tober 5, 1901, to the present time, i. e., about $15,000 per year, or if his services are reckoned by the day for each day actually given to said case, then his said services are worth $100 per day. From my knowledge of the case I think Mr. Stone was fully justified in giving all his time to said case from October 5, 1901, as the record of 50,000 pages and the great and intricate questions involved and other matters of importance, made it necessary for him, in order to do his duty to his client, to practically lay aside all other business and devote his entire time to said case.

WILLIAM W. GURLEY.

Subscribed and sworn to before me this 10th day of March, 1908.

WILL H. CLAKE,
Notary Public.

(Seal)

AFFIDAVIT OF JOHN J. HERRICK.

In the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

United States
vs.
Oberlin M. Carter, *et al.* } Gen. No. 25980.

State of Illinois,
County of Cook. } ss.

John J. Herrick, being first duly sworn, on oath deposes and says:

That he is now, and for over thirty-six years past has been, a practicing lawyer in the City of Chicago, and for at least the last thirty years of that period, he has been familiar with the amount and value of attorneys' fees in important litigation; that he has read the petition, dated February 19, 1908, in the above entitled cause, of Horace G. Stone, for attorney's fees under the said contract of November 6, 1901; that he has also read the affidavit of William W. Gurley in said cause, subscribed and sworn to by said Gurley on the 10th day of March, 1908; that he has also had a personal acquaintance with said Stone for many years past, and has a personal knowledge as to the ability, and character of the work, of said Stone as an attorney, by reason of

such acquaintance and his professional relations with said Stone, and from briefs prepared by said Stone which he has had occasion to read; that, assuming that the facts as to the nature and character of the legal services rendered by said Stone are correctly set forth in said petition, affiant is of the opinion that said Stone is entitled to receive either $50 per day from October 5, 1901, to the present time, i. e., about $15,000 per year, or if his services are reckoned by the day for each day actually given to said cause, then his said services are worth $100 per day.

JOHN J. HERRICK.

Subscribed and sworn to before me this 11th day of March, A. D. 1908.

FRANK JULIUS SMITH,
Notary Public.

AFFIDAVIT OF N. C. SEARS.

In the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

United States
vs.
Oberlin M. Carter, *et al.* } Gen. No. 25980.

Nathaniel C. Sears being first duly sworn deposes and says, that he has been a practicing lawyer in the City of Chicago for more than thirty years last past, except for such part of said period as was covered by his service on the Bench of the Superior Court of Cook County, or the Appellate Court for the First District of Illinois; that he is familiar with the customary and reasonable charges of practicing attorneys in large and important cases in this jurisdiction; that he has read the petition, dated February 19, 1908, of Horace G. Stone, Esquire, for attorney's fees in the above entitled cause under contract of November 6, 1901; that he has also read the affidavit of William W. Gurley, Esquire, filed in support of said petition; that he has had a personal acquaintance with the said Horace G. Stone, Esquire, for many years past and has personal knowledge of the ability of the said Horace G. Stone, Esquire, as a lawyer; that he has been engaged in the above entitled cause as attorney of said Oberlin M. Carter in Chicago assisting the said Horace G. Stone,

Esquire, chief counsel of the said Oberlin M. Carter in said cause; that he has thus become familiar to a considerable extent with the nature, character and extent of the legal services rendered by said Horace G. Stone, Esquire, in said cause; from the said knowledge of affiant, and assuming in connection therewith that the facts as to the nature, character and extent of the legal service rendered by the said Horace G. Stone, Esquire, are correctly set forth in his said petition, this affiant is of opinion that a customary and reasonable charge for the legal services of said Horace G. Stone, Esquire, would be not less than One Hundred Dollars ($100) per day for the time actually expended in such legal services, and that a charge of $15,000.00 per year, that is to say $50.00 per diem, covering the entire time of the engagement of said Horace G. Stone, Esquire, in said litigation from October 5, 1901, would be an exceedingly reasonable charge for said services, and that in the opinion of affiant, said Horace G. Stone, Esquire, is entitled to receive at least the above specified amounts as fees.

NATHANIEL C. SEARS.

Subscribed and sworn to before me this 16th day of March, A. D. 1908.

FRED L. BLACKINGTON,
Notary Public.

(Seal)

AFFIDAVIT OF JOHN S. MILLER.

In the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

United States
vs.
Oberlin M. Carter, *et al.* } Gen. No. 25,980.

State of Illinois. }
County of Cook. } ss.

John S. Miller, being first duly sworn, on oath says, that he is now and for upwards of thirty years last past has been a practicing lawyer in the City of Chicago, in said County, District and State, and that he is familiar with the reasonable and customary charges of practicing attorneys in said City of Chicago in cases of importance; that he has

read a copy of the petition in this case of Horace G. Stone, dated February 19, 1908, for the allowance of solicitor's fees, and has also read the affidavits of Messrs. Gurley, Sears and Herrick in support of said petition; that affiant has for many years had personal acquaintance with the said Horace G. Stone and with his standing at the bar of Chicago; that from the facts known to affiant as aforesaid, and those appearing in the said petition, this affiant is of the opinion that a reasonable and customary charge for the professional legal services of said Horace G. Stone in the case and matter therein referred to would be one hundred dollars per day for the time actually expended by him in such legal services, and that a charge of fifteen thousand dollars per year for the entire time of the engagement of said Stone in said litigation from October 5, 1901, to the termination thereof would be a very reasonable and moderate charge for said services.

JOHN S. MILLER.

Subscribed and sworn to before me this 18th day of March, A. D. 1908.

(Seal)

R. E. SCHREIBER,
Notary Public.

AFFIDAVIT OF JOHN P. WILSON.

In the Circuit Court of the United States, for the Northern District of Illinois.

United States
vs.
Oberlin M. Carter, *et al.* } Gen. No. 25980.

State of California,
County of Los Angeles. } ss.

John P. Wilson, being first duly sworn, on oath deposes and says:

That he is now, and for over forty years past has been, a practicing lawyer in the City of Chicago, and that for many years he has been familiar with the amount and value of attorney's fees in important litigation; that he has read the petition, dated February 19th, 1908, in the above entitled cause, of Horace G. Stone, for attorney's fees under the said contract of November 6th, 1901; that he has also read the

affidavit of William W. Gurley in said cause, subscribed and sworn to by said Gurley on the 10th day of March, 1908; that he has also had a personal acquaintance with said Stone for many years past and has a personal knowledge as to the ability and character and the work of said Stone as an attorney; that, upon the assumption that the facts as to the nature and character and amount of the legal services rendered by the said Stone are correctly set forth in said petition, affiant is of the opinion that fifteen thousand dollars per year from October 5th, 1901, to the present time would be no more than a reasonable compensation for his professional services in the above entitled cause.

JOHN P. WILSON.

Subscribed and sworn to before me this 25th day of March, A. D. 1908.

(Seal) S. G. CRUICKSHANK,

Notary Public in and for the County of Los Angeles, State of California.

PETITION OF N. C. SEARS FOR ALLOWANCE OF FEES, AND AFFIDAVITS ATTACHED.

In the Circuit Court of the United States, For the Northern District of Illinois, Eastern Division.

United States
vs.
Oberlin M. Carter *et al.* } Gen. No. 25980.

Petition of Nathaniel C. Sears for Allowance of Solicitor's Fees Under Contract of November 6th, 1901.

To the Honorable Christian C. Kohlsaat,
Circuit Judge of said Court:

Your petitioner, Nathaniel C. Sears, respectfully represents and states to your Honor, as follows: That a contract was entered into in the above entitled cause between complainant and the defendant, Oberlin M. Carter et al., by which it was agreed that there should be paid out of the money in controversy solicitors' fees of chief counsel for said Oberlin M. Carter and also fees for his attorney at Chicago,—said contract being in part as follows:

"The fees, traveling expenses and other expenses of Oberlin M. Carter's chief counsel and of his attorney at Chicago, to be fixed and allowed by the court."

Your petitioner is informed and believes that the said contract was afterwards approved by the court in the above entitled cause.

Your petitioner further states that he was engaged by said Oberlin M. Carter as his attorney at Chicago to render professional services in connection with Horace G. Stone, Esq., chief counsel of said Oberlin M. Carter in the above entitled cause; that, among other things, your petitioner was engaged to participate in the oral argument upon the trial of said cause; that in order to prepare for such argument your petitioner was obliged to familiarize himself with the record in said cause (except as to certain matters pertaining to certain funds) and that your petitioner did, in order to familiarize himself with the facts in said cause, and to be able to take part in the oral argument upon the trial of said cause, spend a large amount of time in reading and studying the record in said cause; that your petitioner was engaged in said work during a considerable portion of the months of July, August and up to the 18th day of September, A. D. 1906; that on

the 18th day of September, 1906, the trial of said cause was commenced and your petitioner attended as one of the attorneys in said cause during the days occupied by such trial and took part in the oral argument of the said cause; that after the trial of said cause your petitioner has been called upon to render further professional services in said cause in connection with the final disposition of said cause, and as attorney, during the months of September and October, 1906, and during the months of February and March, 1908, rendered professional services in that behalf; that in consideration of the litigation, the amounts and interest involved and the amount of time which petitioner has been obliged to devote to said cause, your petitioner is of the opinion that an allowance of six thousand ($6000) Dollars, for his services would be a very reasonable allowance and would certainly not be in excess of the usual, reasonable and customary fees charged by members of the legal profession in the City of Chicago for professional services in litigations of like importance.

Wherefore your petitioner respectfully prays that he may be allowed, in accordance with the provisions of said contract, the sum of Six thousand ($6000.) Dollars for his fees in this behalf.

Respectfully submitted,

NATHANIEL C. SEARS

Dated, Chicago, March 25th, A. D. 1908.

AFFIDAVIT OF JOHN S. MILLER.

In the Circuit Court of the United States, For the Northern District of Illinois, Eastern Division.

United States
vs.
Oberlin M. Carter *et al.* } Gen. No. 25980.

State of Illinois, }
County of Cook. } ss.

John S. Miller, being first duly sworn, deposes and says that he is a practicing lawyer in the City of Chicago; that he is familiar with the reasonable and customary charges of practicing attorneys in the said city in cases of importance; that he has read a copy of the petition in the above entitled cause of Nathaniel C. Sears, dated March 25th, 1908, for the allowance of solicitors' fees; that he is acquainted

and has been for many years with said Nathaniel C. Sears; that from the facts known to affiant, and appearing in the said petition, this affiant is of the opinion that a reasonable and customary charge for the professional legal services of said Nathaniel C. Sears, as set forth in the said petition, would be not less than Six thousand ($6000.) Dollars.

JOHN S. MILLER.

Subscribed and sworn to before me this 26th day of March, A. D. 1908.

DON C. WRAY,
Notary Public.

AFFIDAVIT OF JOHN J. HERRICK.

In the Circuit Court of the United States, For the Northern District of Illinois, Eastern Division.

United States
vs.
Oberlin M. Carter *et al.* } Gen. No. 25980.

State of Illinois, }
County of Cook. } ss.

John J. Herrick, being first duly sworn deposes and says that he is a practicing lawyer in the City of Chicago; that he is familiar with the reasonable and customary charges of practicing attorneys in the said city in cases of importance; that he has read a copy of the petition in the above entitled cause of Nathaniel C. Sears, dated March 25th, 1908, for the allowance of solicitors' fees; that he is acquainted and has been for many years with said Nathaniel C. Sears; that from the facts known to affiant, and appearing in the said petition, this affiant is of the opinion that a reasonable and customary charge for the professional legal services of said Nathaniel C. Sears, as set forth in the said petition, would be not less than Six thousand ($6000.) Dollars.

JOHN J. HERRICK.

Subscribed and sworn to before me this 26th day of March, A. D. 1908.

FRANK JULIUS SMITH,
Notary Public.

Endorsement Petition of N. C. Sears with affidavits attached. Filed April 1, 1908 H. S. Stoddard Clerk

And on towit: the 13th day of April 1908 came N. C. Sears and attached to the foregoing petition and filed in the clerk's office of said Court, his affidavit in the words and figure following towit:—

AFFIDAVIT OF N. C. SEARS.

In the Circuit Court of the United States, For the Northern District of Illinois, Eastern Division.

United States
vs.
Oberlin M. Carter *et al.* } Gen. No. 25,980.

State of Illinois
Cook County } ss.

Nathaniel C. Sears, being first duly sworn, deposes and says that he has rendered the professional services set forth in the foregoing petition; that he did so in pursuance of the request of Horace G. Stone, Esq. as Chief Counsel of said Oberlin M. Carter, and at the request of the said Oberlin M. Carter.

This affiant further says that, in the services rendered and time expended as indicated in said petition, this affiant did no more than he believed to be reasonably necessary in order to enable him to render the services requested by said Stone and said Carter; that the time expended in the examination of the record in this cause was necessarily expended to the end before set forth; that the court attendance was only when specially requested by said Stone or said Carter, or both; that the fair and reasonable value of the services rendered by this affiant is not less than six thousand dollars ($6000); and that this affiant has been paid nothing on account of said services.

NATHANIEL C. SEARS.

Subscribed and sworn to before me this 11th day of April, A. D. 1908.

M. E. SHIELDS,
Notary Public, Cook County, Illinois.

Endorsement Filed April 13, 1908 H. S. Stoddard Clerk.